

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
SEA-PAC COMPANY, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 78-20

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$500 civil penalty for the alleged violation of the terms of an NPDES waste discharge permit, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and David A. Akana (presiding), at a formal hearing in Bellingham, Washington, on September 26, 1978. Respondent was represented by Charles W. Lean, Assistant Attorney General; appellant was represented by its attorney, Edward B. O'Connor.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

DAA/DO

FINDINGS OF FACT

I

Appellant, a sea food processor of salmon, is located on the Squalicum Waterway, at 601 West Chestnut Street in Bellingham, Washington. The plant operates during the summer months of each year and employs a maximum of 25 persons. As a result of its processing, wastewater is discharged into Bellingham Bay each operating day.

II

A National Pollutant Discharge Elimination System (NPDES) Permit was issued to appellant requiring that all industrial and sanitary waste discharges to Bellingham Bay, except for non-contact cooling water, be eliminated by their interception, collection, and discharge to the City of Bellingham sanitary sewerage system by October 1, 1974. Appellant was also required to report its compliance or non-compliance with the terms of the permit within 14 days after October 1, 1974. Appellant did not make any such report.

Appellant's connection to a municipal system was contemplated as long ago as April, 1968.

III

The City sewer system was available to appellant for hookup on August 12, 1974. Appellant first learned of the hookup availability in the spring of 1976 (Exhibit R-5) and hired an engineer to design a system in July of 1976. Appellant's president testified that he had no personal notice that the system was ready for hookup until his company was issued a civil penalty in December of 1976.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IV

In November, 1976, respondent's agents inspected the plant and discovered that the process and restroom wastewater was not connected to the City sewer. For allegedly failing to comply with the terms of its NPDES permit, appellant was assessed a \$2,000 civil penalty by respondent in December, 1976. Concurrently, respondent issued a Notice of Violation which required that appellant file a report relating the steps it would take to control the wastewater.

V

In its Application for Relief from Penalty, appellant cited government standards which affected design factors and lack of notice from the City regarding sewer availability. Also in its response, appellant included a compliance schedule which proposed an April 1, 1977 plan submission date and connection to the City sewer by June 17, 1977.

VI

Based upon its Notice of Violation and the response thereto, respondent ordered appellant to submit its plans and specifications by April 1, 1977 and to eliminate all industrial and sanitary waste discharges to Bellingham Bay by July 1, 1977. The request for relief from the \$2,000 civil penalty was held in abeyance pending appellant's compliance with the above Order.

On April 5, 1977 appellant's plans and specifications were submitted to respondent and approved by respondent on April 15, 1977. On July 18, 1977 appellant's engineer reported that the plant was connected to the City's sewer system by July 1, 1977. An inspection conducted on December 1, 1977 verified connection to the City sewer except for a

1 floor drain.

2 After review of the circumstances of the case, respondent
3 reduced the \$2,000 civil penalty to \$500, which amount is here appealed.

4 VII

5 Any Conclusion of Law which should be deemed a Finding of Fact
6 is hereby adopted as such.

7 From these Findings the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 Appellant violated RCW 90.48.180 by its failure to comply with
11 Condition S3.a of its NPDES Waste Discharge Permit No. WA-002981-5.
12 Appellant had a duty to report to respondent if it could not meet the
13 date but it did not do so. Connection to the City sewer could have been
14 made as early as August 12, 1974 had appellant and its agents proceeded
15 in a timely manner. The burden of complying with a permit condition
16 is not upon the issuing agency but upon the permit recipient who seeks
17 the benefits thereunder. Accordingly, the civil penalty assessed
18 pursuant to RCW 90.48.144 was proper. The amount of the civil penalty,
19 \$500, is reasonable in view of the circumstances of the case and should
20 be affirmed. Respondent is authorized to assess a fine of up to \$5,000
21 per day for each day of violation but did not do so in this case.

22 II

23 Any Finding of Fact which should be deemed a Conclusion of Law
24 is hereby adopted as such.

25 From these Conclusions the Board enters this

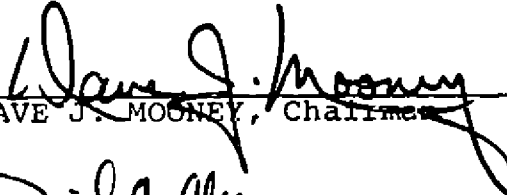
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

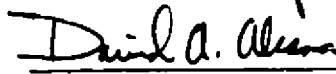
ORDER

The \$500 civil penalty is affirmed.

DATED this 16TH day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


DAVID A. AKANA, Member